

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

SAVE THE BULL TROUT, and
ALLIANCE FOR THE WILD
ROCKIES,

Plaintiffs,

vs.

UNITED STATES FOREST SERVICE,

Defendant.

CV-21-70-M-KLD

ORDER

The Montana Department of Natural Resources and Conservation (DNRC) has filed a “Motion for Extension and Order that DNRC is not Required to Answer or File Responsive Motion to the First Amended Complaint Unless and Until the Court Grants Plaintiffs’ Motion to Amend Complaint and the Plaintiffs Properly Serve DNRC.” (Doc. 24). Plaintiffs and Defendant United States Forest Service (USFS) take no position on DNRC’s Motion.

Plaintiffs filed their Complaint in this matter on June 4, 2021. (Doc. 1). The Complaint only names the USFS as a Defendant. (Doc. 1). The USFS filed its Answer on August 9, 2021. (Doc. 5). On November 8, 2021, Plaintiffs filed a First Amended Complaint naming DNRC as an additional Defendant. (Doc. 16). As DNRC correctly points out, however, Plaintiffs filed their First Amended

Complaint without obtaining consent of the USFS or leave of Court as required under Federal Rule of Civil Procedure 15(a)(2).

Plaintiffs obtained a summons for DNRC on November 8, 2021 (Doc. 17), and served DNRC with the summons and a copy of the First Amended Complaint on November 9, 2021. (Doc. 24, at 2).

On November 12, 2021, Plaintiffs file a Motion to Amend Complaint requesting that the Court allow the filing of their First Amended Complaint. (Doc. 18). USFS opposes Plaintiffs' motion for leave to amend, and the Court has not yet ruled on the motion.

On November 24, 2021, DNRC requested and was granted an extension of 21 days, up to and including December 21, 2021, within which to file an answer or Rule 12 motion in response to Plaintiffs' First Amended Complaint. (Docs. 20, 22). DNRC later discovered that Plaintiffs did not obtain consent of USFS or leave of Court prior to filing the First Amended Complaint as required by Rule 15(a)(2). (Doc. 24, at 2). Accordingly, DNRC has filed a motion for an order that it is not required to file and serve an answer or Rule 12 motion to the First Amended Complaint unless and until the Court grants Plaintiffs' Motion to Amend Complaint and Plaintiffs properly serve DNRC. (Doc. 24). Plaintiffs and USFS take no position on DNRC's motion. (Doc. 24, at 2).

The Court has reviewed the record in this matter and finds that DNRC's

motion is well-taken. Therefore,

IT IS ORDERED that DNRC's motion (Doc. 24) is GRANTED and the Court's November 29, 2021 order giving DNRC until December 21, 2021 to answer or respond to the First Amended Complaint (Doc. 22) is VACATED. DNRC is not required to file and serve an answer or motion pursuant to Rule 12 unless and until the Court grants Plaintiffs' Motion to Amend Complaint and the Plaintiffs properly serve DNRC with the First Amended Complaint thereafter.

IT IS FURTHER ORDERED that the Clerk of Court modify the docket to reflect that the First Amended Complaint (Doc. 16) is lodged with the Court, rather than filed, and terminate DNRC as a party.

DATED this 15th day of December, 2021



Kathleen L. DeSoto
United States Magistrate Judge